

**October 24, 2005**

**Testimony of Matthew W. O'Neill**

**I. Experience**

I am an attorney with the Milwaukee law firm of Friebert, Finerty & St. John, S.C. I have practiced in the area of election and campaign finance law for the past thirteen years.

In 2004, I served as Deputy State Counsel for Kerry-Edwards Campaign. In that capacity, I helped train over 700 lawyers to observe at the polls and help people exercise the right to vote. Our primary focus was to ensure that every eligible and qualified voter who showed up at the polls on election day was allowed to cast a ballot.

As part of our efforts, we worked closely with the Executive Director of the State Election Board, Kevin Kennedy, and with the Milwaukee County District Attorney's office, to map out state and federal laws regarding necessary identification for registration and voting. The goal was to make sure that all of our observers were fully informed and were on the same page legally as the state and local officials. I attended a training session provided by the Elections Board for Chief Election Inspectors so that I could learn first-hand what the election workers learned from the state officials.

Prior to the election, Milwaukee County Executive Scott Walker publicly stated his intent to limit the number of ballots provided to the City of Milwaukee, because in his opinion the requests were unrealistically high. I participated in a hearing in the County Executive's office, where a groundswell of public objections to the plan caused the County Executive to change his mind and ultimately provide the ballots requested by the City.

I also successfully defended a last-minute attempt to remove 5,600 names from the City of Milwaukee registration list based upon unreliable computer analysis. Less than a week before the election, a Republican-led effort was filed with the City Elections Commission to invalidate 5,600 names on the Milwaukee poll list based upon a computer analysis purporting to show that the addresses did not exist in the City. At the hearing, the Republican witnesses acknowledged that they had not personally verified 99% of the addresses on the list, did not know how many may have been the result of clerical errors, and that the gentleman who signed the verified complaint had learned of the entire matter the day before the hearing. The alleged computer expert acknowledged that he personally checked

three of the addresses on the list, and found that one of the three addresses in fact did exist. The City denied the complaint.

I also personally filed a lawsuit, in my capacity as an elector of the City of Milwaukee, against the City of Milwaukee Election Commissioner on eve of election. We learned at noon on the day before the election that the Elections Commission had not processed eight boxes of voter registration cards, meaning that thousands of people who had properly registered would not be included on the poll lists on election day. With the cooperation of attorneys for the Republican Party and Kevin Kennedy, we were able to work out an agreement the night before the election to ensure that those voters were protected

On election day, I worked in the Milwaukee "boiler room" taking phone calls from polling places throughout the city.

After the election, I oversaw an analysis of hundreds of incident reports prepared by our attorney volunteers on election day. Our completed report has been submitted for the Committee's review.

## **II. Observed Four Major Problems with Election Process in 2004**

Our experience in the 2004 election revealed four major problems with respect to the City of Milwaukee:

1. The large turnout (76% statewide) simply overwhelmed the under-trained election volunteers.
2. Republican suppression efforts slowed process and made voting more difficult in targeted areas.
3. The City of Milwaukee election commission offices failed to properly process registrations and failed to timely deliver absentee ballots.
4. The absentee ballot procedures caused confusion at end of the day.

The Incident Reports reflect that Wisconsin's same-day registration process allowed thousands of qualified voters to exercise their constitutional right to vote, and helped prevent the potential widespread disenfranchisement potentially caused by deputy registrars who did not properly complete registration forms and by the City of Milwaukee's failure to complete the processing of thousands of proper registration cards prior to the election. The primary problems encountered with the same-day registration process involved the need for additional poll workers designated to handle same-day registration, and clarification of the acceptable

forms of proof of residency. There were no reports of wide-spread voter fraud, and no identified problems that could be easily solved with a photo ID requirement.

### **III. GOP Suppression Efforts in 2004 Presidential Election**

The Republican Party had hundreds of attorneys deployed to targeted wards whose primary function appeared to be the intimidation and suppression of minority voters under the guise of monitoring for “fraud.” In addition, the GOP paid hundreds of non-lawyers to “observe” at targeted polls while wearing orange T-shirts emblazoned with “HAVA Volunteer” on the front. Our volunteers also encountered law enforcement officials visiting various polls and challenging the propriety of efforts by the Voter Protection attorneys and Election Protection coalition volunteers to assist voters at the polls.

The primary aspects of the carefully planned GOP suppression effort included:

- Placing at least one person behind the election inspectors in targeted wards with a handheld electronic device (primarily Palm Pilots or Blackberries) to stare at each voter while entering their name and address in the device as they identified themselves to the pollworkers and received a ballot.
- Paying individuals \$160 to wear orange “HAVA Volunteer” T-shirts and patrol polling places. In large part these individuals (who were not volunteers) knew nothing about the Help America Vote Act, and several wrongly suggested that HAVA required an already-registered voter to produce identification in order to vote.
- Impersonating authorities at the polling places. The Reports reflect instances of orange-shirted observers stating that they were authorities, and instances of persons claiming to be “election officials” and giving out incorrect information about the registration process.
- Walking up and down voting lines with printed lists in hand and suggesting that persons “not on the list” were not allowed to vote.

- Using attorneys to lodge challenges to voters pursuant to § 6.925, Wis. Stats. In many cases Republican attorneys would lodge a challenge, disrupt the voting process, and then abandon the challenge, after forcing a voter to answer questions under oath, by refusing to execute sworn statements supporting the claimed challenges.
- Challenging the authority of election inspectors during every step of the election day process, including: (a) challenging the use of special deputy registrars for same day registration (despite an October 27, 2004 City of Milwaukee Elections Commission resolution authorizing the process); (b) challenging inspectors' attempts to continue to process votes during machine breakdowns; (c) asking an inspector to sign a form stating that a machine was not inspected; and (d) challenging the use of volunteers to help process same day registration cards.
- Using law enforcement agents to harass Election Protection volunteers attempting to assist voters standing in line. For example, at about 5:30 p.m. at Holton School, four men, one with visible handcuffs, walked through the polling place and told Election Protection volunteers not to assist voters attempting to locate the correct polling place.
- Threatening to "call the authorities" if election inspectors did not act as instructed by Republican attorneys.
- Challenging any absentee ballot that did not have a Wisconsin return address in the certificate, despite the fact that an out-of-state return address is legal and appropriate for out-of-state absentee voters.
- Challenging valid student registration with photo IDs matched to student directories, and thereafter challenging any student who corroborated another student's residence.

In addition to these generalized efforts, the Republican Party attempted to potentially disenfranchise thousands of City of Milwaukee voters through an eleventh-hour challenge (filed literally minutes before the deadline for filing any such challenge) to a list of 5,619 addresses that the Republican Party contended did not exist. As demonstrated during an October 28, 2004 hearing, the Republican Party did not bother to check the validity of 99% of the names and addresses on the list, many of which were the result of clerical errors that occurred

when City employees entered information on the computer system. After that effort failed, just days before the election the GOP publicly threatened to challenge an additional 30,000 registered voters based upon unverified assertions that "apartment numbers" did not match up.

#### **IV. Administrative Problems**

Analysis of the Incident Reports reflects a number of general administrative problems caused or realized by the huge turnout. These problems include the following:

- (1) broken or faulty voting machines;
- (2) poll staffing shortages;
- (3) poll worker errors, such as opening the polls late, failure to post sample ballots or ward maps, and requiring photo ID in order to vote or register;
- (4) incomplete or erroneous poll lists;
- (5) polling place facility deficiencies, such as cramped registration and voting areas, lack of curbside voting availability and limited handicapped accessibility; and
- (6) confusion regarding absentee ballots.

These problems reflect a need for legislative reforms designed to increase the staffing of polling places at high turnout elections, require detailed training of all poll workers, revise the deputy registrar process to ensure such registrations are properly completed and processed, and streamline the absentee voting procedures. As a general matter, any reforms that could help defuse the long lines and congestion on election day, such as expanded early voting and increased staffing, will help to solve many of the identified problems.

#### **V. Voter ID Legislation – The New Poll Tax**

In my opinion, requiring voters to show a photo ID before being allowed to vote would not address or fix any of the problems we observed. Rather, it would in all likelihood disenfranchise thousands of poor, elderly and urban voters.

Proponents of a photo ID requirement have tried since the election to paint a picture of rampant fraud to justify a photo ID requirement. Yet neither an exhaustive analysis by the Milwaukee Journal Sentinel nor a joint investigation by U.S. Attorney Steven Biskupic and Milwaukee County District Attorney E. Michael found any evidence of widespread fraud.

Rather, the various analyses of the problems with the 2004 election in Milwaukee all point to a dire need for real administrative reforms designed to make the registration and voting process more efficient and more accountable.

## **VI. Needed Reforms**

The following areas are ripe for meaningful and comprehensive reform:

- Staffing of polling places
- Training of poll workers
- New and better voting machines
- Expanded early voting opportunities
- Restrictions on intimidation and suppression
- Consistent proof of residency requirements, consistent with HAVA
- Training and strict accountability for deputy registrars
- Uniform registration forms
- Streamlined absentee voting process
- Centralized counting of absentee ballots

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